TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 55

I. J. VAN HUFFEL, PETITIONER,

vs.

TRACE D. HARKELRODE, TREASURER OF TRUMBULL COUNTY, OHIO, ETC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

PETITION FOR CERTIORARI FILED APRIL 24, 1931

CERTIORARI GRANTED MAY 25, 1931

(35,829)

(35,829)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 22, 1931

No. 28,887.

In the Court of Common Pleas

OF TRUMBULL COUNTY, OHIO.

I. J. VAN HUFFEL,
Warren, Ohio,
Plaintiff,

vs.

FRANK F. MUSSER, Treasurer,
Trumbull County, Warren, Ohio,
Defendant.

PETITION TO QUIET TITLE AND FOR EQUITABLE RELIEF.

(Filed in Common Pleas Court, March 23, 1929.)

Comes now I. J. Van Huffel, plaintiff, and says that Frank F. Musser is the duly elected, qualified and acting treasurer of Trumbull County, Ohio, and as such is by law charged with the duty of collecting taxes lawfully assessed and appearing upon the tax duplicates of said Trumbull County.

Plaintiff further says that he is the owner of and in possession of the following described real estate, to-wit:

PARCEL No. 1:

Situated in the Township of Howland in the County of Trumbull and State of Ohio, and known as being part of Section 11 of said Township and bounded and described as follows:

Beginning at a stake in the center of Dietz Road, said stake being 283.36 feet from a stone on the center line of said road and Perkins road; thence N. 87° 46′ W. along center line of said road 691.64 feet to a stake; thence S. 2° 14′ W. 30 feet to an iron pin, said iron pin being in the south line of said road; thence continuing S. 2° 14′ W. 311.58 feet to an iron pin; thence continuing along same line 341.58 feet to an iron pin; thence S. 87° 46′ E. 514.79 feet to an iron

pin, said iron pin being on the westerly right of way line of the Erie R. R. Main Line Division; thence N. 43° 02′ E. along said right of way line 352.59 feet to an iron pin; thence S. 87° 23′ W. 53.3 feet to an iron pin; said line being the southerly boundary of the United Concrete Brick Co.; thence N. 2° 12′ E. 385.8 feet along the westerly boundary of the United Concrete Brick Co., to an iron pin, said iron pin being on the south line of Dietz Road; thence continuing along said line 30 feet to a stake and the place of beginning, containing 10.48 acres more or less. Being the same land conveyed by The Board of Trade of the City of Warren to The Supreme Motors Corporation Company October 2nd, 1918, and recorded in Volume 248, page 424 Trumbull County Records of Deeds.

PARCEL No. 2:

Situated in the Township of Howland, County of Trumbull and State of Ohio and known as being part of the original survey of lot Eleven (11) Howland Township and further described as follows:

Beginning at the iron pin at the northwest corner of the lands of The American Welding and Manufacturing Company, at the easterly line of the right of way of the Pennsylvania Railroad; thence north 16° 38′ W. along line of said right of way, a distance of 360.98 feet to an iron pin in the center of a 60 foot east and west road, thence south 87° 46′ E. along the center of said road a distance of 1450.10 feet to the northwest corner of other lands formerly owned by The Supreme Motors Corporation, thence S. 2° 14′ W. a distance of 341.58 feet to an iron pin at the northeast corner of lands owned by The American Welding and Manufacturing Company, thence N. 87° 46′ W. along the north line of lands of The American Welding and Manufacturing Company a distance of 1333.61 feet to the place of beginning, containing 10.92 acres; excepting therefrom a strip 30 feet wide for highway and railroad switches along the westerly side, paralled with the easterly line of the Pennsylvania Railroad right of way.

Being the same land conveyed by The Board of Trade of the City of Warren, Ohio, to The Supreme Motors Corporation Company September 20th, 1919, and recorded in Volume 256, page 184, Trumbull County Records of Deeds.

Plaintiff further says that the defendant, Frank F. Musser, as treasurer of Trumbull County, Ohio, claims an estate or interest therein by way of taxes shown on the tax duplicate or a tax lien or liens arising therefrom, adverse to the plaintiff's right and title, but which estate, interest or liens, plaintiff says, are of no force and effect and are clouds on the title of the property of plaintiff above described.

WHEREFORE, plaintiff prays that defendant may be compelled to show his said estate, interest, taxes or liens, and that the same may be adjudged to be null and void and plaintiff's title quieted against the same, and for all proper relief in the premises.

FILLIUS & FILLIUS AND
SNYDER, HENRY, THOMSEN, FORD & SEAGRAVE,
by ALONZO M. SNYDER,
Attorneys for Plaintiff.

(Duly Verified.)

Praecipe for summons, summons issued pursuant thereto and the return of summons are omitted in printing.

Demurrer to petition filed by defendant March 28, 1929, and the order of the court under date of May 17, 1929, overruling the same, are omitted in printing.

ANSWER.

(Filed in Common Pleas Court June 15, 1929.)

Now comes Frank F. Musser, and admits that he is the duly elected, qualified and acting Treasurer of Trumbull County, Ohio; and that he is as such charged by law with the duty of collecting taxes lawfully assessed, and appearing upon the tax duplicates of Trumbull County.

Answering further, defendant says that his records disclose the following unpaid taxes, together with penalty, interest and fees upon the premises described in plaintiff's petition, to-wit:

1924	Acres	1st Half	Penalty	Interest	Last Half	Penalty	Interest
$1.18	10.48	$667.35	$66.74		$667.35	$66.74	
	10.92	46.43	4.64		46.43	4.64	
1925							
$1.28	10.48	733.50	73.35		733.50	73.35	123.30
	10.92	50.37	5.03		50.37	5.03	84.97
1926							
$1.44	10.48	863.42	86.34	303.92	863.42	86.34	265.93
	10.92	39.31	3.93	13.84	39.31	3.93	12.11
1927							
$1.58	10.48	947.37	94.74	250.11	947.37	94.74	208.42
	10.92	43.14	4.31	11.39	43.14	4.31	9.49
1928							
$1.52	10.48	911.39	91.14	160.40	911.39	91.14	120.30
	10.92	41.50	4.15	7.30	41.50	4.15	5.48
1929							
$1.60	10.48	959.36	95.94	84.42	959.36		38.37
	10.92	43.68	4.37	3.84	43.68		1.74
Building omitted from duplicate in 1924		17.70					

Total tax	$10,711.34
Total penalty	969.05
Total interest	2,819.33
Adv. and Aud. fees	1.70
Total	$14,501.42

Defendant further says that said taxes are due and unpaid; and that the same are in full force and effect, and a first and best lien against the premises described in plaintiff's petition.

Answering further defendant denies each and every allegation contained in said petition, except such as are herein specifically admitted to be true.

WHEREFORE, Defendant having answered prays the Court that the lien of the State, for taxes against said premises, be protected; that said taxes be declared a first and best lien against said premises; and for such other relief as is just and equitable.

GEO. W. SECREST,
Attorney for Defendant.

(Duly Verified.)

REPLY.

(Filed in Common Pleas Court July 25, 1929.)

Now comes plaintiff by leave of court first had and obtained, and for reply to defendant's answer denies that the taxes alleged therein are in full force and effect, except the taxes of 1928 as hereinafter set forth; denies that they constitute a first and best lien against the premises described in plaintiff's petition and further denies each and every allegation in said answer contained which are not admissions to allegations in plaintiff's petition.

Further replying, plaintiff says that on or about the 24th day of April, A. D. 1928, H. B. Doyle, the duly appointed, qualified and acting Trustee in Bankruptcy of The Sterling Knight Company, which company was then the owner of the property described in plaintiff's petition, filed his certain petition in the United States District Court for the Northern District of Ohio, Eastern Division, to marshal liens and sell real estate, making the following parties defendants therein, to-wit: The Sherwin-Williams Co., The Old Dominion Mortgage Co., The Union Trust Company, Trustee, The Michigan Lubricator Company, The Class Journal Co., The General Aluminum & Brass Manufacturing Co., C. F. Routzahn, Collector of Internal Revenue, State Tax Commission of Ohio, Department of Industrial Relations and the Industrial Commission of Ohio, Western Reserve National Bank, Joseph Hughes, Clerk of Courts, Ohio Public Service Co. and Frank F. Musser, County Treasurer, the defendant herein, praying that an order be granted marshalling the liens upon and interests in said property, determining the validity, amount and priority thereof, ordering its sale at public auction or private sale, as the court might direct, free and clear from all encumbrances and interests, and transferring the rights of the parties to the fund derived from said sale, and further prayed for an order to show cause upon the parties defendant therein, requiring them to set up their rights or be forever barred from asserting the same, and for such other and further relief as in equity was just.

Answers and/or cross petitions were filed on behalf of defendants The Old Dominion Mortgage Co., The Union Trust Company, Trustee, The General Brass Co., The Second National Bank of Warren, Bert Buckley, Treasurer of the State of Ohio, C. F. Routzahn, Collector of Internal Revenue, and Frank F. Musser, Treasurer

of Trumbull County, Ohio, the other defendants being in default for answer or demurrer.

That defendant, Frank F. Musser, County Treasurer, in his answer therein set up all taxes, penalties and interest which had accrued for the years 1924, 1925, 1926 and 1927 respectively, aggregating $9,717.25.

That said court having jurisdiction of the subject matter and all the parties, thereafter on or about June 26, 1928, upon hearing made certain findings and rendered judgment as per Journal Entry duly recorded in the Records of the United States District Court, Northern District of Ohio, Eastern Division, and also recorded as instrument No. 151,979 in the Recorder's Office of Trumbull County, Ohio, a copy of which Journal Entry is hereto attached, marked Exhibit "A" and made a part hereof as if fully rewritten herein.

That said judgment and decree has fully adjudicated the right of defendant Frank F. Musser as County Treasurer in and to the premises herein involved with reference to said taxes set up in his answer filed herein, and that said judgment and decree is still in full force and effect, never having been vacated, modified or reversed, and that thereby this court has no jurisdiction to reconsider or further adjudicate the rights of defendant Frank F. Musser as Treasurer of Trumbull County, Ohio, for taxes against the premises involved in the within suit.

Plaintiff further says that under said decree as aforesaid, H. B. Doyle, Trustee in Bankruptcy, sold said premises free and clear from all liens, claims, incumbrances, including taxes above described, and all rights of all the parties to said suit, to The Union Trust Company, Trustee, for $75,000.00; and that thereafter this plaintiff through divers conveyances became the bona fide purchaser thereof for good and valuable considerations, taking title subject only to taxes for the year 1928 and thereafter.

Plaintiff further says that within the time allowed for the payment of taxes, plaintiff tendered to defendant Frank F. Musser, Treasurer of Trumbull County, Ohio, the sum of $952.89 in full payment of taxes for the first half of 1928, which tender was refused by defendant; that said plaintiff on or before the time for payment of the taxes for the last half of 1928, made a similar tender of $1905.78 for the full year 1928, which tender was also refused and made a similar tender of the first half of the

taxes for the year 1929 and all of the year 1928, which was refused.

Plaintiff further says that he is and has been at all times ready, willing and able to pay the taxes for the year 1928, and of 1929 which have accrued, but that defendant wrongfully and illegally refuses to accept the same.

WHEREFORE plaintiff having fully replied prays that defendant's answer be dismissed, that plaintiff be granted the relief prayed for in his petition, that his rights be fully protected in connection with the tender made for the payment of taxes for the year 1928, and that he be granted such other and further relief as he may be entitled to in law or in equity.

FILLIUS & FILLIUS and
SNYDER, HENRY, THOMSEN, FORD & SEAGRAVE,
Attorneys for Plaintiff.

(Duly verified.)

EXHIBIT "A."

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION.

IN THE MATTER OF
THE STERLING KNIGHT CO.,
BANKRUPT.

In Bcy. #12838.

H. B. DOYLE, TRUSTEE,
Plaintiff,
vs.
THE SHERWIN-WILLIAMS COMPANY, *et al.,*
Defendants.

ORDER MARSHALLING LIENS AND SALE OF REAL ESTATE AT PUBLIC OR PRIVATE SALE.

This day this cause came on for hearing on the Trustee's Petition to Marshal Liens and Sell Real Estate and the Answers and Cross Petitions of the Sherwin-Williams

Company, The Old Dominion Mortgage Company, The Union Trust Company, Trustee, The Michigan Lubricator Company and The General Brass Company, C. F. Routzahn, Collector of Internal Revenue for United States, Second National Bank of Warren, Frank F. Musser, County Treasurer, Trumbull County, and the Answers of the Trustee to the various Cross Petitions.

The court after hearing the evidence and having carefully examined the proceedings and being fully advised in the premises finds that The Union Trust Company, Trustee, has a good, valid and subsisting lien on the real estate described in its mortgage, and that the same is a first lien upon said property in the sum of $231,000. That The Old Dominion Mortgage Company has a good, valid and subsisting lien upon the property described in its mortgage, and that the same is a second lien upon said property in the sum of $18,999.00.

That the claim of The Old Dominion Mortgage Company and the claim of The Second National Bank of Warren, Ohio, arise out of the same transaction and exist by virtue of the notes and mortgage executed by The Old Dominion Mortgage Company and to which The Second National Bank claimed to have some rights and their claims are identical, and inasmuch as the mortgage is recorded in the name of The Old Dominion Mortgage Company this order will decree the lien to be in The Old Dominion Mortgage Company.

That C. F. Routzahn, Collector of Internal Revenue for United States has a good, valid and subsisting lien upon the real estate described in Trustee's Petition to Marshal Liens in the sum of $17,266.00. That the State Tax Commission of Ohio has a good and valid lien on the property described in Trustee's Petition in the sum of $6,037.50. That Frank F. Musser, Treasurer of Trumbull County, has a good and valid lien upon the property described in said Trustee's Petition in the amount of $9,717.25.

That the said liens of the United States government, the State of Ohio and Trumbull County are of equal priority and are the third lien upon the property described in Trustee's Petition.

That The Sherwin-Williams Company have a good and valid lien upon said real estate described in Trustee's Petition in the sum of $156.40, and that the same is fourth in order of priority.

That the Second National Bank claim being identical with The Old Dominion Mortgage Company claim and The Old Dominion Mortgage Company claim being a matter of record and the court having found that The Old Dominion Mortgage Company has a lien by virtue of said claim, The Second National Bank is found to have no lien.

That The Class Journal Company being in default for pleading is found to have no lien against the premises described in Trustee's Petition. That The General Aluminum & Brass Manufacturing Company claiming a lien by virtue of a judgment secured on March 14, 1927, being after the filing of the bankruptcy petition, is found to have no lien. That The Michigan Lubricator Company claiming a lien by virtue of a judgment secured on April 13, 1927, said judgment being secured after the filing of the petition in bankruptcy, is found to be no lien upon the premises described herein.

That the rights and priority of the lienors as hereinbefore stated be and they hereby are transferred to the fund derived from the sale of said property, and the Trustee is hereby authorized and directed to offer said property at public auction on the premises on the 10th day of July, A. D. 1928, beginning at two o'clock in the afternoon and to make due return of his proceedings under this order.

PAUL E. CARSON,
Referee.

Demurrer to reply filed September 3, 1929, and order of the court under date of October 5, 1929, overruling the same, are omitted in printing.

The agreed statement of facts filed February 24, 1930, is omitted in printing as the Court of Appeals made a finding of fact which is printed *infra*, Page 19.

DECREE AND JUDGMENT OF THE COMMON PLEAS COURT.

(Filed March 28, 1930.)

Journal 84, Page 311.

March 28, 1930.

This cause came on for hearing before the Court upon the petition of plaintiff, the answer of the defendant, the reply, the agreed statement of facts of the parties duly submitted and the arguments and brief of counsel, and upon consideration whereof the Court finds that at the time of the institution of this action the plaintiff I. J. Van Huffel was and still is the owner of and in possession of real estate described in the petition; that the defendant Trace D. Harkelrode is the duly elected, qualified and acting treasurer of Trumbull County, Ohio, having succeeded defendant Frank F. Musser in such office, and that the former defendant Musser, who was the duly elected, qualified and acting treasurer of this county, was such treasurer at the institution of this action and during the time of the bankruptcy proceedings hereinafter referred to; that the plaintiff herein derives his title to the real estate in the petition described mediately from H. B. Doyle as trustee in bankruptcy of The Sterling-Knight Company, and that at the time of the institution of the bankruptcy proceedings referred to The Sterling-Knight Company was the owner in fee simple and in possession of said real estate; that notice of the pendency of the bankruptcy proceedings against The Sterling-Knight Company was given to the defendant Frank F. Musser, County Treasurer, prior to the time of final hearing in said matter and that the said Frank F. Musser mailed to Paul E. Carson, Referee in Bankruptcy, a statement of taxes due on said real estate at the time; that notice of the sale of the property herein was duly received by said Frank F. Musser as County Treasurer, and no further answer or cross petition was filed in said cause on behalf of said treasurer, nor was he represented by counsel nor was he himself present at any of the hearings; that said bankrupt estate has been fully adminstered and closed and that no proceedings for review or appeal were filed within the time limit therefor in said bankruptcy proceedings, being Cause No. 12838 on the Bankrupt Docket of the District Court of the United States for the Northern District of Ohio, Eastern Division; that the county taxes of Trumbull County,

Ohio, for the years 1924, 1925, 1926 and 1927 were charged on the tax duplicate of said county and effective at the time of the bankruptcy proceedings herein referred to and that the penalties and interest thereon for such years have been added to the amount since the institution of such proceedings by reason of the non-payment of the amounts listed as such taxes; that the amount of taxes for the years 1924 and 1925 were certified delinquent in February 1926; that none of the amounts listed in defendant's Exhibit A as taxes, penalties and interest have been paid; that in January 1929 and before the final due date thereof the plaintiff tendered to Frank F. Musser as County Treasurer the sum of $952.89 in payment of taxes for the first half of the year 1928 against the real estate described in the petition. On July 20, 1929 and before the final due date thereof the plaintiff duly tendered to defendant Frank F. Musser the sum of $1905.78 in payment of taxes for the full year 1928 against the real estate in the petition described, and on January 20, 1930 the plaintiff duly tendered to the defendant Trace D. Harkelrode, County Treasurer, the sum of $3172.47 in full payment of the taxes against the real estate described in the petition for the full year 1928 and for the full year 1929 upon a reduced valuation of $79,168.00 for such real estate, as claimed by the plaintiff to be the true value thereof in money in a complaint theretofore filed by the plaintiff with the Auditor of Trumbull County, Ohio, in accordance with the provision of law for the contest of assessed values for tax purposes; that each of such tenders was refused for the stated reason that previous taxes as listed had not been paid.

The Court finds that the allegations of the petition are true and that the plaintiff herein is the owner in fee simple of the property in the petition described and that his title thereto should be and hereby is quieted as against the pretended claim of the Treasurer of Trumbull County, Ohio, for the taxes and penalties thereon for the years 1924, 1925 and 1926 and 1927 and the said taxes and penalties are hereby ordered cancelled and discharged; that the taxes for the year 1928 in the sum of $1905.78 without penalties or interest, are a lien upon said real estate; that the taxes for the year 1929, as yet undetermined and which cannot be determined until the complaint filed by the plaintiff with the Auditor of Trumbull County for contest of assessed valuation for tax purposes is determined, are a lien upon said real estate; that upon the payment by the plaintiff to the defendant

Harkelrode as Treasurer of taxes for the year 1928 without penalty or interest, $1905.78 and the payment of taxes to the defendant Harkelrode on said property for the year 1929 as heretofore tendered to defendant Harkelrode, Treasurer, by plaintiff without penalty or interest, shall fully release said property from all liens now held by the said defendant Harkelrode as Treasurer against said property for taxes of any and all kinds and descriptions as shown upon the tax duplicate of said Trumbull County, Ohio, except such further amount of taxes for the year 1929, if any, as may be found to be due thereon on the final determination of the complaint filed by plaintiff with the Auditor of Trumbull County, Ohio, for contest of assessed valuation for tax purposes on said property for that year. And thereupon the title to said property shall be fully quieted in plaintiff without lien or claim of any kind thereon by any person defendant to this action except as herein noted.

It is further Ordered that the defendant Harkelrode as Treasurer of Trumbull County, Ohio shall strike off from the tax lists as held by him the taxes and penalties upon said property for the years 1924, 1925, 1926 and 1927 and mark them cancelled and discharged and the Auditor of Trumbull County, Ohio, is hereby ordered to strike from the tax duplicate of Trumbull County, Ohio, the taxes and penalties appearing upon said books on said property for the years 1924, 1925, 1926 and 1927 and to mark the same cancelled and discharged by order of Court.

It is further Ordered that the Clerk of Courts transmit to both the Treasurer and Auditor of Trumbull County, Ohio, a certified copy of this Journal Entry.

Plaintiff to pay costs. Defendant excepts.

NOTICE OF APPEAL.

(Filed in Common Pleas Court, April 7, 1930.)

Notice is Hereby Given That the defendant, Trace D. Harkelrode, has appealed the finding of the Court of Common Pleas in this cause to the Court of Appeals of this County.

G. H. Berrell and Geo. W. Secrest,
Attorneys for Defendant.

April 3rd, 1930.

We, being attorneys of record for the Plaintiff, I. J. VanHuffel, hereby acknowledge receipt of the foregoing notice of appeal.

FILLIUS & FILLIUS,
Attorneys for Plaintiff.

OPINION OF THE COURT OF APPEALS.

(Filed June 4, 1930.)

POLLOCK, *J.*:

This action comes into this Court on appeal, and was submitted on the pleadings and an agreed statement of facts.

The plaintiff in this action is seeking to have his title quieted to the real estate described in the petition against taxes claimed by the defendant Treasurer to be due Trumbull County for the years 1924, 1925, 1926 and 1927, amounting to $9717.25.

An answer was filed by the Treasurer claiming that the taxes which the plaintiff seeks to have his title quieted against were taxes accruing and unpaid for the years above mentioned.

We learn from the pleadings and the agreed statement of facts that The Sterling-Knight Company was adjudged a bankrupt on May 13, 1927, and that the real estate described in the petition was a part of the bankrupt's estate at the time of the adjudication in bankruptcy. Afterwards, on October 28, 1927, at an election held before Paul E. Carson, Referee in Bankruptcy, H. B. Doyle was elected trustee of said estate, and gave bond and qualified.

On March the 28th, 1928, the trustee in bankruptcy filed a petition in bankruptcy, making the lien-holders, including the then Treasurer of Trumbull County, parties in said action, describing said real estate, asking that an order may be granted marshalling the liens upon said property, determining the validity and priority thereof, and further asking for an order of sale of said real estate either at public or private sale, free and clear of all incumbrances and interest, and transferring the rights of the parties to the fund derived from said sale.

The real estate described in this petition is the same real estate now owned by the plaintiff in this action, and for which he is asking that his title be quieted.

On the filing of this application, the Referee in Bankruptcy issued his notice of the filing and the purpose thereof to all creditors of said bankrupt, and also a further notice of the time of the hearing of the application, which notices were served upon the defendant Treasurer of Trumbull County.

The Treasurer of Trumbull County, before the time set for the hearing, filed with the Referee in Bankruptcy, a statement of the taxes then accrued on the property and unpaid, being for the beforementioned taxes. The Treasurer did not otherwise appear in the bankruptcy proceedings.

After the hearing, the Referee in Bankruptcy marshalled the liens on this real estate, finding that The Union Trust Company, as Trustee, had the first lien thereon in the sum of $231,000.00; that the Old Dominion Mortgage was the second lien thereon in the sum of $18,999.00, and that the claims of the United States Government, the State of Ohio and Trumbull County are of equal priority and have the third lien upon the property described. The Referee further ordered that the rights and priority of the lien-holders be transferred to the fund derived from the sale of the property, and that the Trustee is authorized and directed to offer said property for sale at public auction. There was also a supplemental order issued that the purchaser may use and apply towards the payment of the purchase price for said real estate any of the bonds secured by the first mortgage indenture between The Sterling-Knight Company and The Union Trust Company, Trustee.

Afterwards the Trustee in Bankruptcy returned the order of sale that he had sold the property to The Union Trust Company, Trustee, for $75,000.00 and that the Trust Company had tendered in payment the bonds of the Sterling-Knight Company in the amount of $200,000.00, in payment of the purchase money of the above described property.

Afterwards, the Trustee was ordered to convey this property to The Union Trust Company in obedience to the former order of sale, which was done, and the plaintiff's title to the property comes through conveyances from The Union Trust Company. The Union Trust Company did not pay the purchase price bid for the property except by the surrender and cancellation of said bonds.

The taxes due Trumbull County for the years involved in this action was not paid by the Trustee in Bank-

ruptcy, or in any way cancelled, except by the finding of the Referee in Bankruptcy that these taxes were a third lien upon the real estate on which they were assessed. The Trustee received from the sale of other property of the bankrupt estate sufficient money to more than pay the taxes due on the real estate.

We then come to the question whether this order in the bankruptcy proceeding is a valid and binding disposition of the taxes on this property, and that the property, upon which it accrued, is relieved of the burden of the payment of taxes or whether the order and finding in the bankruptcy proceeding is void.

The first question to be determined is whether the judgment of the bankruptcy proceeding can be questioned in a collateral proceeding.

> "Although a court may possess jurisdiction of a cause of the subject matter and of the parties, it is still limited in its mode of procedure, and in the extent and character of its judgments. It must act judiciously in all things, and cannot then transcend the power conferred by law."
>
> *Windsor v. McVeigh*, 93 U. S. 274-282, 23 L. Ed. 917.

When a court has jurisdiction, whether its decision is correct or otherwise, the judgment is binding on every other court, "but if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void." *Elliot v. Piersol*, First Peters, 328-340. To the same effect is *Freeman on Judgments*, Section 117, and *Black on Judgments*, Section 170.

A bankruptcy court has only such powers and jurisdictions as is conferred by statute, or such as are necessarily implied from such statutes.

> "Bankruptcy Courts, like all other national courts, although not courts of inferior jurisdiction, are courts of limited jurisdiction. They are creatures of the statute, and possess no powers except those conferred upon them either expressly or by necessary implication."
>
> *In re Williams*, 120 Federal, 38;
>
> *Wilson v. U. S.*, 228 Federal, 344-351.

Section 64-a of the Bankruptcy Law reads as follows:

> "Debts which have priority—The Court shall order the trustee to pay all taxes legally due and

owing by the bankrupt to the United States, State, County, District, or Municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax, the same shall be heard and determined by the Court."

The power of the state to levy and collect taxes and also the procedure of collecting are inherent in the State.

Western Union Telegraph Company v. Mayer, 28 O. S. 521-533;

City of Cleveland v. Edwards, 109 O. S. 598.

"In the case of a tax upon the same subject by both governments, the claim of the United States as the supreme authority must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon which it shall be exercised, are all equally within the discretion of the legislatures to which the states commit the exercise of the power."

Union Pacific R. R. Co. v. Peniston, 18 Wall. 530 (21 L. Ed. 791).

"The right to levy and collect taxes has always been recognized as one of the supreme powers of the state, essential to its maintenance, and for the enforcement of which the legislature may resort to such remedies as it chooses, keeping within those which do not impair the constitutional rights of the citizen."

Leigh v. Green, 193 U. S. 79-87 (48 L. Ed. 626).

The only power or jurisdiction that the bankruptcy court has over state taxes is contained in the provisions of Section 64-a, *supra*. That section directs that the Referee shall order the Trustee to pay all the taxes due a state or county before he pays the creditors. The only further duty that the court has if there is a question as to the amount or legality of such taxes, to hear and determine these questions.

"A lien for taxes does not, however, stand upon the footing of an ordinary encumbrance, and is not displaced by a sale under a pre-existing judgment or

decree, unless otherwise directed by statute. It attaches to the *res* without regard to individual ownership, and when it is enforced by sale, pursuant to the statute prescribing the mode of assessing and collecting them, the purchaser takes a valid and unimpeachable title."

Lake Superior R. R. Co. v. United States, 93 U. S. 424 (23 L. Ed. 965).

"The requirement of the present law is a wide departure from the Act of 1867, and specifically obliges the Trustee to pay all taxes legally due and owing without distinction between United States and the State, County, District, or municipality."

New Jersey v. Anderson, 203 U. S. 483-489 (51 L. Ed. 297).

"The bankruptcy act evidently does not contemplate that taxes should be proved, like an ordinary debt, providing, as it does, that they shall be paid by the trustee on order of the court, and that he shall have credit in his accounts upon filing receipts from the proper officials therefor. *In re Prince & Walter* (D. C.) 131 Fed. 546."

In re Anderson, 279 Fed. 525-529.

Section 5671 of the General Code of this State reads as follows, so far as we need refer to it:

"The lien of the state for taxes levied for all purposes, in each year, shall attach to all real property subject to such taxes on the day preceding the second Monday of April, annually, and continue until such taxes, with any penalties accruing thereon, are paid."

Under this provision of the Code, when taxes accrue against real estate, they become a lien upon the real estate until paid.

"By virtue of the above section, the lien of the state for taxes is paramount to all other liens."

Trust Company v. Root, 72 O. S. 535.

"Where real estate of a bankrupt, mortgaged for more than its value, and also subject to the lien of taxes assessed thereon (the tax lien being made paramount to that of the mortgage by the laws of

the state), is sold to the mortgageee, and his claim against the bankrupt's estate for the deficiency proved and allowed, the court will not order the taxes to be paid out of the funds of the estate, since such payment would operate to the benefit of the mortgagee, in prejudice of the rights of general creditors, and since the taxes are, in any event, secured."

In re Veitch, et al., 101 Fed. 251.

We think that it appears from the authorities referred to that the bankruptcy court had no power or jurisdiction to relieve the real estate belonging to the bankruptcy estate from the taxes then accrued and due Trumbull County by any order that it could make except by ordering the Trustee to pay the taxes, and that the taxes for the years referred to are yet a lien on the real estate and the Treasurer of Trumbull County has a right to collect such taxes from the real estate in any way authorized by the laws of this State.

It follows that judgment must be entered for the defendant, and plaintiff's petition dismissed. Exceptions noted.

If a motion for a new trial is filed, it is overruled, and exceptions noted.

Farr, and Roberts, *JJ.*, concur in the judgment.

MOTION FOR NEW TRIAL.

(Filed in the Court of Appeals June 7, 1930.)

Plaintiff moves the court for a new trial on the grounds that the decision and judgment of the Court herein are contrary to law and are against the weight of the evidence.

A. M. Snyder,
Attorney for Plaintiff.

SUPPLEMENTAL REPLY.

(Filed in Court of Appeals Sept. 17, 1930.)

Now comes the plaintiff and by leave of court first had and obtained to file this his supplemental reply says:

That notwithstanding the fact that the trustee in bankruptcy had in his hands funds derived from sources other than the sale of mortgaged property out of which, under the bankruptcy laws, the whole or a part of the taxes now claimed by the defendant might and should have been first paid, the defendant and his predecessor in office made no application to the bankruptcy court to have the taxes now claimed to be due him for the years 1924, 1925, 1926 and 1927 paid from such funds.

WHEREFORE plaintiff prays as in his petition.

SNYDER, HENRY, THOMSEN, FORD & SEAGRAVE,
FILLIUS & FILLIUS,
Attorneys for Plaintiff.

(Duly verified)

DECREE AND JUDGMENT OF THE COURT OF APPEALS.

(Entered Sept. 17, 1930.)

Journal 2, p. 201, Sept. 17, 1930.

And now this cause came on to be heard upon the appeal of the defendant from the judgment of the Common Pleas Court of Trumbull County, Ohio, and upon consideration of the petition, answer, reply, the agreed statement of facts, the arguments and briefs of counsel, the court finds that:

FINDINGS OF FACT.

1. On and for some time prior to the 13th day of May, 1927 The Sterling-Knight Company was the owner and was in possession of the real estate described in plaintiff's petition, and on said day The Sterling-Knight Company was by the United States District Court for the Northern District of Ohio, Eastern Division, duly adjudged a bankrupt, Bankruptcy Cause No. 12838, and the administration of its estate referred to Paul E. Carson, the duly appointed, qualified and acting Referee in Bankruptcy at Youngstown, Ohio.

2. On the 28th day of October, 1927, at a meeting duly held for such purpose, H. B. Doyle of Youngstown, Ohio, was duly elected Trustee of the bankrupt estate, and he qualified as such by giving bond in the sum of $30,000 with the United States Fidelity & Guaranty Company as surety, for the faithful performance of his official duties as such Trustee, which bond was accepted and approved by the Referee.

3. On the 24th day of April, 1928, the Trustee filed his petition with the Referee for an order to marshal the liens upon and to sell the property of the bankrupt, including the real estate described in plaintiff's petition herein, and for the transfer of all liens thereon to the fund to be derived from the sale thereof, making as parties defendant to such petition all those who claimed any lien upon such property, including the property described in plaintiff's petition herein, which parties included among others Frank F. Musser, the then duly elected, qualified and acting Treasurer of Trumbull County, Ohio, the State Tax Commission of Ohio, and C. F. Routzahn, the Collector of Internal Revenue for the Eighteenth Collection District of Ohio.

4. Upon the filing of such petition the Referee, in the manner and form as provided by the Bankruptcy Laws of the United States mailed to all known creditors of the bankrupt, including the Treasurer of Trumbull County, Ohio, the following notice:

"In Bankruptcy

In the Matter of The Sterling Knight Company, Bankrupt.	Notice of Application for Leave to Sell Assets and Marshal Liens.

To all Creditors of said Bankrupt:

Take notice that the trustee herein has filed his application for leave to sell at public or private sale free and clear of all incumbrances real estate, buildings and building equipment. Property located at Howland Twp. at City of Warren limits, containing 21 acres. For better description see Trustee's Petition to sell.

Belonging to the above estate, and that said application will be for hearing before the undersigned

Referee in Bankruptcy at his offices 310-11-12 Home Savings & Loan Building, in the City of Youngstown, Ohio in said District on May 4, 1928 at 10 o'clock in the forenoon, at which time and place any person interested may appear and show cause, if any they have, why an order authorizing such sale should not be granted.

PAUL E. CARSON,
Referee in Bankruptcy."

And the Referee, upon the filing of such petition, mailed to those named as claiming any lien on the property therein described, including the Treasurer of Trumbull County, Ohio, the following notice:

"IN THE DISTRICT COURT OF THE UNITED STATES.
NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

IN THE MATTER OF THE STERLING KNIGHT CO., BANKRUPT.	IN BANKRUPTCY NOTICE OF APPLICATION FOR LEAVE TO SELL ASSETS AND MARSHAL LIENS.

To all creditors of said bankrupt:

Take Notice that the trustee herein has filed his application for leave to sell at public or private sale free and clear of all incumbrances real estate, buildings and building equipment. Property located in Howland Twp. at City of Warren limits, containing 21 acres. For better description see Trustee's petition to sell. Belonging to above estate and that said application will be for hearing before the undersigned Referee in Bankruptcy, at his offices, 310-11-12 Home Savings and Loan Building, in the City of Youngstown, Ohio, in said District, on May 4, 1928 at 10 o'clock in the forenoon, at which time and place any person interested may appear and show cause, if any they have, why an order authorizing such sale should not be granted.

PAUL E. CARSON,
Referee in Bankruptcy.

Unless your interest is set up by proper pleading at or prior to said hearing an order will be entered finding that you have no lien."

Both of the notices so mailed were received by the then Treasurer of Trumbull County, Ohio, who upon receipt thereof mailed to the Referee a statement of the taxes due upon the real estate described in the Trustee's petition to sell, being the same as that described in plaintiff's petition herein, which statements, received and filed by the Referee on April 30, 1928, showed that there was then due to the Treasurer of Trumbull County, Ohio, for taxes upon the same for the years 1924, 1925, 1926 and 1927 the sum of $9,717.25, including interest and penalty to such date. Other lien holders named as parties defendant in the Trustee's petition to sell likewise filed a statement of their claims, including Bert B. Buckley, the duly elected, qualified and acting Treasurer of the State of Ohio, who filed a statement of claim on April 30, 1928 to the effect that the bankrupt was indebted to the State of Ohio for franchise fee and penalty for the year 1924 in the sum of $6,037.50, and C. F. Routzahn, Collector of Internal Revenue for the Eighteenth Collection District of Ohio on May 16, 1928 filed his statement of claim setting forth that there was due to the United States the sum of $17,266.00 for manufacturer's excise tax for the period from May 1924 to June 1925 inclusive, for which a lien had been filed with the Recorder of Trumbull County, Ohio, August 10, 1925.

5. On the 16th day of June 1928 the Referee entered an order reciting that the petition of the Trustee to marshal liens and to sell the real estate of the bankrupt came on for hearing, together with the answers and cross petitions of Frank F. Musser, County Treasurer of Trumbull County, Ohio, and other lien holders, and that after hearing the evidence and examining the same the Referee found that The Union Trust Company, Trustee, of Cleveland, Ohio, by virtue of a deed of trust dated June 1, 1923, had a good and valid first lien upon the property in the sum of $231,000.00; that the Old Dominion Mortgage Company of Cleveland, Ohio, by virtue of a deed of trust dated October 31, 1924, had a good and valid second lien upon the property in the sum of $18,999.00; that Frank F. Musser, County Treasurer, had a good and valid lien upon the premises in the sum of $9,717.25, that the State of Ohio had a good and valid

lien upon the premises in the sum of $6,037.50 and that C. F. Routzahn, Collector of Internal Revenue of the United States, had a good and valid lien upon the premises in the sum of $17,266.00; that the lien of C. F. Routzahn, Collector of Internal Revenue, and the lien of Bert B. Buckley, Treasurer of the State of Ohio, and the lien of Frank F. Musser, Treasurer of Trumbull County, Ohio, were of equal priority and were the third lien upon the property described in the Trustee's petition to sell, being the same as that described in the petition herein. The Referee further ordered that the liens and rights of the lien holders be transferred from the real estate to the fund to be derived from the sale thereof, and that the Trustee be and he thereby was authorized and directed to offer the real estate for sale at public auction on the 10th day of July 1928, free and clear of all liens and incumbrances. At none of the hearings in the bankruptcy proceedings was the defendant Frank F. Musser, County Treasurer, present in person or represented by legal counsel and with the exception of the notice recited in finding of fact numbered 6 herein neither the said Frank F. Musser, County Treasurer, nor the Prosecuting Attorney's Office had actual knowledge of the finding of the court determining the priority of liens until on or about the 12th day of February 1929.

6. On the 29th day of June 1928 the Referee mailed to all the creditors of The Sterling-Knight Company the following notice:

"In the District Court of the United States.
Northern District of Ohio,
Eastern Division,

In Bankruptcy.

In the Matter of
The Sterling Knight Co.,
Bankrupt. } Notice of Sale.

To all Creditors of said Bankrupt:

Notice is hereby given that the Trustees herein will sell at Public Sale on July 10, 1928, at 2:00 o'clock P. M., at No. ..... on premises Warren, Ohio, the following property belonging to said bankrupt's estate:

Real Estate, buildings and building equipment. Property located in Howland Twp. at city of Warren limits, containing 21 acres. For better description see Trustee's petition to sell.

PAUL E. CARSON,
Referee in Bankruptcy.

Youngstown, Ohio, June 29, 1928."

which notice was received by the then Treasurer of Trumbull County, Ohio.

7. On July 12, 1928 the Trustee reported to the Referee that on July 10, 1928 and at the appointed time he offered the real estate of the bankrupt for sale pursuant to previous orders of the Referee, and that the highest and best offer obtainable was an offer from The Union Trust Company, Trustee, of Cleveland, Ohio, for the sum of $75,000.00. The Referee, upon consideration of such report and on the 12th day of July 1928, approved and confirmed the same and ordered that the offer of The Union Trust Company, Trustee, of Cleveland, Ohio, be accepted and directed the Trustee to forthwith execute proper instruments of title upon receipt of the payment of the purchase money.

8. Thereafter and on the 5th day of September 1928 the Trustee conveyed the real estate in question to The Union Trust Company, Trustee, of Cleveland, Ohio, and on the 7th day of September 1928 The Union Trust Company, Trustee, of Cleveland, Ohio, conveyed the same to the Warren-Cleveland Company, an Ohio corporation. On the 5th day of October 1928 the Warren-Cleveland Company conveyed the premises to I. J. Van Huffel, free and clear of all encumbrances excepting taxes for the year 1928, which I. J. Van Huffel assumed and agreed to pay.

9. I. J. Van Huffel, plaintiff in this action, was at the time of instituting these proceedings and still is the owner and in possession of the real estate aforesaid, which is the same as that described in his petition herein.

10. On January 19, 1929, and before the final due date thereof, plaintiff tendered to Frank F. Musser, the then duly elected, qualified and acting Treasurer of Trumbull County, Ohio, the sum of $952.89 in payment of the taxes due for the first half of the year 1928 upon the real estate herein involved, and on July 20, 1929, and before the final due date thereof, the plaintiff duly

tendered to the defendant, Frank F. Musser, the then Treasurer of Trumbull County, Ohio, the sum of $1905.78 in payment of taxes for the full year 1928 and upon the real estate herein involved. Shortly thereafter the term of office of Frank F. Musser as County Treasurer of Trumbull County, Ohio, expired and Trace D. Harkelrode was elected to succeed the said Frank F. Musser and he duly qualified as such and has been substituted as party defendant for the said Frank F. Musser herein, and he is now the duly elected, qualified and acting Treasurer of Trumbull County, Ohio. On January 20, 1930, the plaintiff duly tendered to the defendant, Trace D. Harkelrode, as County Treasurer, the sum of $3172.47 in full payment of taxes upon the real estate herein involved for the full year 1928 and for the full year 1929, the tender for the latter year being upon a reduced valuation in the amount of $79,168.00 for such real estate, as claimed by the plaintiff to be the true value thereof in money in a complaint theretofore filed by the plaintiff with the Auditor of Trumbull County, Ohio, for the protest of assessed valuation for tax purposes. Each of the tenders so made to Frank F. Musser and his successor in office, Trace D. Harkelrode, were refused for the stated reason that previous taxes for the years 1924, 1925, 1926 and 1927 had not been paid.

11. The plaintiff, I. J. Van Huffel, has at all times been and is now ready, willing and able and offers to pay the amounts so tendered by him or such other amounts as may be properly assessed against the real estate herein involved for the years 1928 and 1929.

12. On February 21, 1929 H. B. Doyle, as Trustee in Bankruptcy, filed his final account with the Referee in Bankruptcy which shows the following receipts:

Public sale of real estate	$ 75,000.00
Sale of mortgaged personal property	96,527.30
Refund from United States Government	2,500.00
Miscellaneous	44.46
Total	$174,071.76

and that the amounts received from the sale of real estate and mortgaged personal property were paid to the first and second mortgage holders in accordance with the order of the Referee in Bankruptcy, except a sufficient amount thereof which, together with the $2500.00 and

$44.46 of unencumbered funds, was necessary to pay the costs of administration. The costs of administration totalled $19,171.46 including attorneys' fees, Referee's fees of $1850.00 and Trustee's fees of $1850.00, which two latter disbursements were made July 24, 1928. All disbursements made by Trustee in Bankruptcy except attorneys' fees and State and Federal Court Receivers' compensation, which three items aggregated $6,526.12, were made prior to January 1, 1929. Frank F. Musser, the Treasurer of Trumbull County and his successor in office made no application other than the statement of claim referred to in paragraph 4 hereof to Bankruptcy Court to have the taxes for the years 1924, 1925, 1926 and 1927 paid out of any of the funds in the hands of the Trustee. On the 15th day of March 1929 the final report of H. B. Doyle, Trustee in Bankruptcy, was approved and confirmed by the Referee in Bankruptcy and H. B. Doyle as Trustee was discharged from any further duties therein, and the bankrupt estate of The Sterling-Knight Company was closed.

13. Taxes due the Treasurer of Trumbull County, Ohio, for the years 1924, 1925, 1926 and 1927 upon the real estate herein involved have not been paid. No exceptions were taken by the Treasurer of Trumbull County, Ohio, to any of the proceedings had in the bankruptcy court, nor within the time limited by law therefor was any petition to review any of the rulings of the Referee filed in the United States District Court.

CONCLUSIONS OF LAW.

1. The Bankruptcy Court had no power or jurisdiction to relieve the real estate belonging to the bankrupt estate of The Sterling-Knight Company from the taxes which, with penalty and interest had accrued at the time the real estate was ordered to be sold, and consequently taxes due to the Treasurer of Trumbull County, Ohio, for the years 1924, 1925, 1926 and 1927, plus penalty and interest, are still a lien upon the real estate described in plaintiff's petition, which can be collected in the manner authorized by the laws of the State of Ohio.

2. The fact that taxes for the years 1924, 1925, 1926 and 1927, plus penalty and interest, were a lien upon the property described in plaintiff's petition and were due and payable did not justify the Treasurer of Trumbull County in refusing to accept from plaintiff, I. J. Van

Huffel, the payment of the taxes for the years 1928 and 1929 when payment of the same, as herein-above found, was tendered.

3. Taxes due the Treasurer of Trumbull County for the year 1928 upon the real estate described in plaintiff's petition are still a lien thereon but without penalty or interest.

4. Taxes for the year 1929 are a lien upon the real estate described in plaintiff's petition and are to be determined by the Auditor according to law upon the determination of the complaint filed by plaintiff with the Auditor of Trumbull County upon the assessed valuation for tax purposes of said property for the year 1929.

It is by the court, therefore,

ORDERED, ADJUDGED AND DECREED that plaintiff's petition be and the same hereby is dismissed and that the defendant have and recover from the plaintiff his costs herein expended taxed at $.....

To all of which the plaintiff, I. J. Van Huffel, excepts, and his motion for a new trial is overruled, to which he likewise excepts.

Approved:

JOHN POLLOCK,
Presiding Judge.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS OF TRUMBULL COUNTY, OHIO, TO CERTIFY ITS RECORD.

(Filed in the Supreme Court of Ohio, October 14, 1930.)

Comes now I. J. Van Huffel, plaintiff in error herein, and represents to the Court that the Court of Appeals of Trumbull County, at the September Term of said Court, to-wit: On the 17th day of September, A. D. 1930, rendered a certain judgment against the said I. J. Van Huffel, plaintiff in error, in favor of Trace D. Harkelrode, Treasurer, defendant in error, in a cause therein pending, wherein I. J. Van Huffel was plaintiff and Trace D. Harkelrode, Treasurer, was defendant, being cause No. 613 on the docket of said court, said cause having come into said court by appeal by defendant from the judgment of the Court of Common Pleas.

The said I. J. Van Huffel, plaintiff in error herein, moves the Court for an order directing the said Court of Appeals to certify the record of said cause to this Court for the following reasons, to-wit:

1. There is probable error in the proceedings of said court in said cause.

2. The questions involved in said proceedings are of public and great general interest within the meaning of Article IV, Section 2 of the Constitution of the State of Ohio, and this Court has jurisdiction to and out to review said judgment.

(Signed) ALONZO M. SNYDER,
H. H. HOPPE,
Attorneys for I. J. Van Huffel, Plaintiff in Error.

SNYDER, THOMSEN, FORD, SEAGRAVE & ROUDEBUSH, and
FILLIUS & FILLIUS,
Of Counsel.

Notice and Proof of Service of Motion to Certify the Record are omitted in printing.

PETITION IN ERROR.

(Filed in the Supreme Court of Ohio, October 14th, 1930.)

Plaintiff in error, I. J. Van Huffel, files this petition in error as a matter of right for the reasons that the judgment herein complained of is in violation of the Constitution of the United States of America and the Constitution of the State of Ohio and of the rights of this plaintiff in error under said Constitutions of the United States of America and Ohio, and further says that the Court of Appeals of Trumbull County, Ohio, at the September term of said court, to-wit, on the 17th day of September, A. D. 1930, rendered a certain judgment against said I. J. Van Huffel, plaintiff in error, in a cause therein pending wherein I. J. Van Huffel was plaintiff and Trace D. Harkelrode, Treasurer, was defendant, being cause No. 613 on the docket of said Court, said cause having come into said Court by appeal by defendant from the judgment of the Court of Common Pleas, transcripts of docket and journal entries whereof, to-

gether with the findings of facts and all original papers therein are filed herewith.

There is error in said record and proceedings in this, to-wit:

1. Said court erred in overruling the motion of plaintiff below for a new trial.

2. Said judgment is contrary to the evidence and facts found by the court.

3. Said judgment is contrary to law.

4. Said judgment should have been rendered in favor of plaintiff in error, being the plaintiff below.

5. Said court erred in not requiring defendant below to seek the payment of taxes out of general funds in the hands of the trustee in bankruptcy.

6. Said court erred in not giving full force and effect to the judgment of the United States District Court, Northern District, Eastern Division of Ohio.

7. Said court erred in not giving full force and effect to the decisions of the United States Courts construing the United States bankruptcy laws.

8. Said court erred in not giving full force and effect to the United States bankruptcy laws.

9. Said court erred in deciding and adjudging that the United States Bankruptcy Court for the Northern District, Eastern Division of Ohio had no power or jurisdiction to relieve the real estate now belonging to plaintiff in error from taxes which were a lien at the time said real estate was sold through proceedings pending in said Bankruptcy Court, and that said taxes are still a lien upon the real estate described in plaintiff's petition and which can be collected in the manner authorized by the laws of the State of Ohio, and that such decision and judgment was not and is not in violation of the constitutional rights of plaintiff in error, and was not and is not a taking of his property and a denial to him of due process of law and the equal protection of law under and against the provisions of the Fourteenth Amendment of the Constitution of the United States, of Article 1, Section 8, Paragraph 4 of the Constitution of the United States, giving Congress power to establish uniform laws on the subject of bankruptcies, and of the bill of rights of the State of Ohio, particularly Article 1, Section 1 thereof, and of the Constitution of Ohio, particularly Article

1, Section 16, thereof; and plaintiff in error alleges that said decision and judgment of said court of appeals is in violation of his rights under the Constitution of the United States of America and the State of Ohio as above set forth.

10. Said court erred in permitting a collateral attack upon the judgment of the United States Bankruptcy Court made by it in the administration of a bankrupt estate.

11. Said court erred in not declaring that the property now owned by plaintiff below is free of the lien of taxes now standing on the tax duplicate of Trumbull County.

12. The court erred in not protecting plaintiff below, an innocent holder, in his title to real estate acquired from the purchaser thereof at a regular judicial sale made by the Bankruptcy Court.

13. The Court erred in not giving full force and effect to a judicial sale made by said Bankruptcy Court.

14. The court erred in declaring the judgment of the Bankruptcy Court a nullity.

15. Said court erred in rendering judgment for defendant in error, defendant below.

16. Said court commited other errors appearing upon the record.

WHEREFORE, plaintiff in error prays that the judgment of the Court of Appeals herein may be reversed and that he be restored to all things he has lost by reason thereof.

(signed) ALONZO M. SNYDER,
H. H. HOPPE,
Attorneys for I. J. Van Huffel, Plaintiff in Error.

SNYDER, THOMSEN, FORD, SEAGRAVE & ROUDEBUSH,
915 Williamson Bldg., Cleveland, Ohio,
and
FILLIUS & FILLIUS,
Second National Bank Bldg., Warren, Ohio,
Of Counsel.

Waiver of summons in error is omitted in printing.

MOTION TO DISMISS PETITION IN ERROR.

(Filed in the Supreme Court of Ohio, December 2nd, 1930.)

Now comes the defendant in error and moves the Court for an order dismissing the petition in error filed as of right in this action for the following reasons, to-wit:

1. That the action did not originate in the Court of Appeals.

2. That no constitutional question is involved in this case.

3. That the alleged constitutional question involved was not presented to or passed on by the Court of Appeals.

G. H. Bibrell,
Geo. W. Secrest,
Attorneys for Defendant in Error.

APPLICATION FOR REHEARING.

(Filed in the Supreme Court of Ohio, January 16th, 1931.)

Comes now I. J. Van Huffel, plaintiff in error in the above entitled cause, which cause was submitted to this court upon motion to require the Court of Appeals of Trumbull County to certify its record, said motion having been heard and having been refused, and also upon motion of defendant in error to dismiss the petition in error of plaintiff in error filed as a claimed matter of right, which motion was granted and said petition in error dismissed, and now applies to the court under its Rule XX for rehearing of both of said motions on the following grounds:

1. Public and great general interest.
2. Constitutional questions.
3. Error of law.
4. Desirability of a written opinion of this court.

Alonzo M. Snyder,
H. H. Hoppe,
Attorneys for I. J. Van Huffel, Plaintiff in Error.

CERTIFIED TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES.

In the Supreme Court of the State of Ohio.

DOCKET ENTRIES.

Oct. 14, 1930. Petition in error as of right, Waiver of Summons and entry of appearance filed.

Oct. 14, 1930. Court of Appeals Transcript, Common Pleas Court Transcript and Original Papers filed.

Oct. 14, 1930. Motion for an order to certify record, Pltffs. printed briefs on motion, Notice and Proof of Service filed.

Oct. 22, 1930. Stipulation for postponing the printing of record filed.

Dec. 2, 1930. Defendants printed brief filed. 12-3-30 P.S. filed.

Dec. 2, 1930. Motion by Defendant to dismiss Petition in Error as of right filed, notice and proof of service filed.

Dec. 9, 1930. Pltffs. printed reply brief and Additional Authorities filed.

Dec. 24, 1930. Petition in error dismissed, No debatable constitutional question involved. J. 32 P. 299.

Dec. 24, 1930. Motion for an order directing the Court of Appeals of Trumbull County to certify its record, Overruled. J. 32 P. 294.

Dec. 24, 1930. Motion by defendant to dismiss petition in error as of right, Sustained. J. 32-294.

Dec. 27, 1930. Original papers sent to Snyder, Ford, Thomsen, Seagrave & Roudebush.

Jan. 2, 1931. MANDATE ISSUED.

Jan. 2, 1931. CERTIFIED COPY OF ENTRY SENT CLERK.

Jan. 16, 1931. Application for re-hearing filed.

Feb. 7, 1931. Re-hearing Denied. J. 32—P. 316.

JOURNAL ENTRIES.

December 24, 1930. No. 22570, I. J. Van Huffel vs. Trace D. Harkelrode, Treas. etc., Motion for an order directing the Court of Appeals of Trumbull County to certify record. It is ordered by the Court that this motion be and the same hereby is overruled. J. 32 P. 294.

December 24, 1930. No. 22570, I. J. Van Huffel vs. Trace D. Harkelrode, Treas. etc., Motion by defendant to dismiss petition in error as of right. It is ordered by the Court that this motion be and the same hereby is sustained. J. 32 P. 294.

December 24, 1930. No. 22570, I. J. Van Huffel vs. Trace D. Harkelrode, Treas. etc. Error to the Court of Appeals of Trumbull County.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Trumbull County, upon the motion of defendant in error to dismiss the petition in error, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said petition in error be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $.....

Ordered, That a special mandate be sent to the Court of Appeals of Trumbull County, to carry this judgment into execution. J. 32 P. 299.

February 7, 1931. No. 22570, I. J. Van Huffel vs. Trace D. Harkelrode, Treas., etc. It is ordered by the Court that the Application for rehearing in the above entitled cause be and the same hereby is, denied. J. 32 P. 316.

CERTIFICATE OF THE CLERK.

STATE OF OHIO,
FRANKLIN COUNTY,
CITY OF COLUMBUS, SS.

I, Seba H. Miller, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing is a true, full and correct copy, except as to omissions therein indicated, of the record and proceedings had in the case of I. J. Van Huffel, Plaintiff in Error v. Trace D. Harkelrode, Treasurer of Trumbull County, Ohio, Defendant in Error, being cause No. 22570, as the same appears in the files and upon the records of the Supreme Court of Ohio now in my custody and control. No opinion was rendered by the Supreme Court of Ohio.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of the Supreme Court of Ohio to be affixed at Columbus, Ohio, this 20th day of April, 1931.

SEBA H. MILLER,
Clerk of the Supreme Court of Ohio.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 25, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(799)